IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 20 of 1994.

Date of decision: 26-12-2007.

State of H.P. Appellant.

-versus-

Pritam Singh. Respondent.

Coram

Hon'ble Mr. Justice Surjit Singh, J.
Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? Yes.

For the appellant : Mr. D.S. Nainta, Deputy Advocate General.

For the respondent: : Mr. Anup Chitkara, Advocate.

Per Surinder Singh, J.

The challenge has been made to the acquittal of the respondent, in this appeal allegedly for causing the murder of Ram Parkash.

In short the prosecution case is that the respondent and deceased Ram Parkash were shepherds and close friends. They had no enmity with each other.

Shurtingling is a village located in the upper ranges of Himalaya which is close to the Indo Tibet Border in District Kinnaur. In the month of September every year when the snow melts, lush green meadows attract the shepherds to graze their sheep. It is alleged that on 4.9.1989, the respondent and deceased, aforesaid, had taken liquor together in village Kunnu, thereafter as usual, they took their sheep herds in Shurtingling valley.

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[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

Later on Shri Prem Kumar informed the uncle of deceased Padam Lal (PW6) that the dead body of Ram Parkash was lying in Shurtingling nullah. He went to the spot and identified the deceased. He found an injury on the left side of his face but at that time, there was no suspicion and the dead body was cremated in the presence of Vidhayan Singh (PW21), Udyan Singh (PW22) the real brothers of the deceased, Maya Dass (PW9) and other co-villagers.

Thereafter, in the beginning of the month of October, 1989, a pseudonymous complaint was received by the Police, raising the suspicion on the respondent for causing the murder of Ram Parkash which was recorded in the Rapat Roznamcha dated 28.9.1989 in Police Station, Pooh. To investigate the matter as per the provisions of Section 175 of the Code of Criminal Procedure, the Police went to the village of the deceased and it came to the notice of the Investigating Officer that the respondent and the deceased while going on a hilly track from their meadows, the respondent in a fit of intoxication picked up a quarrel with the deceased. Consequently a scuffle took place between them and in that scuffle the respondent is alleged to have hit the deceased on his head, consequently he fell down in the nullah where he breathed his last.

The respondent was arrested and there-after he is alleged to have made extra-judicial confession (Exhibit PC) on a piece of paper in the presence of witnesses, which was taken into possession by the Investigating Officer, Lachhman Singh (PW5) and Chander Shekhar (PW7) were witnesses to that.

In order to connect the respondent with the alleged writing, he was produced before the Chief Judicial Magistrate Kinnaur at Rackong Peo to get his specimen signatures and handwriting for comparison but he declined to give his writing as well as the specimen signatures. On the basis of the

aforesaid only two circumstances, the respondent was involved in the case, accordingly challan against him was presented in the Court for trial.

Finding a prima facie case under Section 302 of the Indian Penal Code, a charge was framed against the respondent to which he denied and claimed trial.

The prosecution led its evidence to prove the charge of murder but at the end of trial the respondent was acquitted and acquittal of the respondent has been assailed in this appeal.

We have heard Shri D.S. Nainta, learned Deputy Advocate General and Shri Anup Chitkara, learned counsel for the respondent and have carefully gone through the evidence on record.

In the instant case as already noticed above, there is no eye witness of the alleged occurrence. The case of the prosecution hinges entirely upon two circumstances, firstly, in the form of extra judicial confession (Exhibit PC) and secondly, the refusal of the respondent to give a specimen writing and signatures before the Chief Judicial Magistrate, for comparison.

A- Extra Judicial Confession.

The statement Exhibit PC, which is said to be extra-judicial confession, when translated into English, reads as under:-

> " Both of us came from Kunnu and altercation took place between us. Thereafter stone might have been stuck against him and he might have been hit by the stone and death might have been caused by me.
>
> Sd/- In Hindi.
> Pritam Singh".

A perusal of the above statement shows that it did not disclose the name of the victim, the place and the date as to when the alleged

occurrence had taken place and on which date and to whom the above statement was made.

It is alleged that the respondent was called by Vidhyan Singh (PW21) and Ranjit Singh. On questioning him, he disclosed about the consumption of liquor and quarrel with the deceased and confessed about hitting him with the stone on his head and he gave the confessional statement (Ext., PC) in writing and after its execution, it was handed over to Udyan Singh, which during the investigation was given by him to the Police.

Vidhayan Singh (PW21) has stated in his cross-examination that Exhibit PC was not written in his presence by the accused-respondent. Whereas, according to Lachhman Singh (PW5) the said document was already written and it was handed over to the Police officer who was present there which was taken into possession vide memo Exhibit PA signed by him and Chander Shekhar (PW7.

The Investigating Officer had taken Ex. PC into his possession from Udhyan Singh on 11.10.1989 vide memo Exhibit PA. From the above statements this document (Exhibit PC) after its execution was immediately handed over to the Police. The respondent was arrested on 6.10.1989. This goes to show that the statement of PW21 Vigyan is blatantly false that he had called the respondent and on questioning he admitted the guilt and gave writing Exhibit PC, whereas his brother Udyan Singh has stated that immediately after its execution, it was handed over to the Police. Thus it is manifest that the said document was scribed in the immediate presence of the Police during the investigation and it is also the prosecution case initially set against the respondent. Thus, it gives an inkling that it was taken down in an illegal manner to fix the respondent.

Legally, the confession made to the Police Officer is in-admissible in evidence under Section 25 of the Evidence Act, that bar is further stretched through Section 26 of the said Act to the confession made to any

other person also, if the confessor was then in the Police custody. Therefore, neither this document nor the statement of the witnesses to this effect are at all admissible in evidence. Even PW9 Maya Dass has further shattered the prosecution case by saying that the respondent did not make such a statement.

Thus, the alleged confession cannot be treated as legal and admissible in evidence to prove the charge against the respondent. The alleged extra judicial confession which is otherwise a weak type of evidence, lacking material corroboration, cannot be accepted to convict the respondent for the offence charged.

B. Refusal to give hand writing by the accused:

The second circumstance that the respondent had refused to give his right and signatures before the Magistrate to infer the guilt against him also cannot be accepted for the reason that the Court exercising criminal jurisdiction has no power during the investigation of an offence to ask the accused person to give his specimen writing or signatures for any kind for comparison. Thus he cannot be a party in collection of the evidence against himself and it is violative of Article 23 (3) of the Constitution. Therefore, the refusal of the respondent to give his writing and signatures cannot be treated as a circumstance against him.

For the reasons aforesaid, we do not find anything which could impel us to convert the acquittal of the respondent to conviction as the findings are born out from the evidence on record. Accordingly the appeal is dismissed.

(Surjit Singh)
Judge.

(Surinder Singh),
Judge.

December 26, 2007.
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